



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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Harold D. Ward, Cabinet Secretary
dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE CHAPTER 22, ARTICLE 11**

TO: Gray Cliff Master Association, Inc.
Attn: Michael A. George, President
522 Blackstone Drive
Morgantown, WV 26508

DATE: January 28, 2022

ORDER NO.: 10012

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter “Director”), under the authority of West Virginia Code 22-11-1 et seq. to Gray Cliff Master Association, Inc. (hereinafter “Gray Cliff”).

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Gray Cliff operates a wastewater treatment facility located in Morgantown, Monongalia County, West Virginia. WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550159, was transferred to Gray Cliff on October 14, 2020. The WV/NPDES permit was reissued on August 26, 2021.
2. On June 2, 2021, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia Legislative Rules and the WV/NPDES permit were observed and documented:
 - a. 47CSR2 Section 3.2.b – Gray Cliff caused conditions not allowable by creating sludge deposits in waters of the State. Sludge and sludge worms originating from the sewage plant were present in an unnamed tributary of the Monongahela River. The deposits affected approximately one thousand (1,000) linear feet of stream.

Promoting a healthy environment.

- b. Section C.4 – Gray Cliff did not electronically submit a Sludge Management Report for 2020. Subsequent to the inspection, a copy of the Sludge Management Report was provided to WVDEP personnel.
- c. Appendix A I.9 – Gray Cliff failed to promptly submit the correct outfall location to WVDEP after being made aware of the incorrect information that was submitted with the WV/NPDES permit application.
- d. Appendix A I.13 – Gray Cliff did not have an outlet marker at Outlet No. 001.
- e. Appendix A II.1 – Gray Cliff did not properly operate and maintain the facility. Specifically:
 - a. The secondary clarifiers were covered with sludge.
 - b. Sludge was in the chlorine contact chamber.
 - c. Mixed Liquor Suspended Solids were bulking.
 - d. Downspouts were connected to the collection system.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W21-31-040-RNW & W21-31-041-RNW were issued to Gray Cliff.

- 3. On December 8, 2021, WVDEP personnel and representatives of Gray Cliff met to discuss the terms and conditions of the Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with West Virginia State Code 22-11-1 et seq., it is hereby agreed between the parties, and ORDERED by the Director:

- 1. Gray Cliff shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
- 2. Because of Gray Cliff's Legislative Rule and permit violations, Gray Cliff shall be assessed a civil administrative penalty of seven thousand six hundred thirty dollars (\$7,630) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Gray Cliff hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21. Under this Order, Gray Cliff agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Gray Cliff does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Gray Cliff other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Gray Cliff shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Gray Cliff becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Gray Cliff shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Gray Cliff intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Gray Cliff (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Gray Cliff of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Gray Cliff to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Gray Cliff, its successors and assigns.

7. This Order shall terminate upon Gray Cliff's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Michael A. George, President
Gray Cliff Master Association, Inc.

2/9/21

Date

Public Notice begin:

Date

Public Notice end:

Date

Katheryn Emery, P.E., Acting Director
Division of Water and Waste Management

Date



DSCF4323: Sludge and sludge worms in the UNT of the Monongahela River below Gray Cliff's sewage plant discharge pipe.



DSCF4324: Sludge and sludge worms in the UNT of the Monongahela River below Gray Cliff's sewage plant discharge pipe.



DSCF4319: Sludge and sludge worms were in the UNT of the Monongahela River.



DSCF4317: Sludge and sludge worms were in the UNT approximately twenty feet below Gray Cliff's sewage plant discharge pipe.



DSCF4247: Sludge and sludge worms in the UNT of the Monongahela River near Boston St.



DSCF4379: Sludge and sludge worms near the mouth of the UNT to the Monongahela River.



DSCF4399: Clarifier closest to the contact chamber was covered with sludge.



DSCF4407: Sludge in the contact chamber.



DSCF4420: A thirty-minute jar test was conducted from the aeration basin closest to the chlorine contact chamber. The result of the test revealed that the sludge was bulking.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Gray Cliff

Receiving Stream:

Treatment System Design Maximum Flow: MGDTreatment System Actual Average Flow: MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			2a	2b	2c	2d	2e							
a)	Amount of Pollutant Released	1 to 3	3	1	1	1	1							
b)	Toxicity of Pollutant	0 to 3	1	0	0	0	1							
c)	Sensitivity of the Environment	0 to 3	1	0	0	0	1							
d)	Length of Time	1 to 3	1	1	1	1	1							
e)	Actual Exposure and Effects thereon	0 to 3	1	0	0	0	1							
	Average Potential for Harm Factor		1.4	0.4	0.4	0.4	1	No	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	1	1	1	3							

Potential for Harm Factors:

1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)

1)d - Length of Time of Violation

1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by $\leq 40\%$ for Avg. Monthly or $\leq 100\%$ for Daily Max., exceed numeric WQ standard by $\leq 100\%$, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by $\geq 41\%$ and $\leq 300\%$ for Avg. Monthly, $\geq 101\%$ and $\leq 600\%$ for Daily Max., exceed numeric WQ standard by $\geq 101\%$ and $\leq 600\%$ or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by $\geq 301\%$ for Avg. Monthly, $\geq 601\%$ for Daily Max., exceed numeric WQ standard by $\geq 601\%$, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

[illegible]

[illegible]

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$760
6.2.b.4 - Compliance/noncompliance history -			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$760)
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$7,630

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$0
Comments: Economic benefit not warranted.	